

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

In the Matter of the Adopted Rules of the
State Department of Commerce Governing
MNvest Securities Regulation, Minnesota
Rules, Chapter 2876

**ORDER ON REVIEW OF
RULES UNDER
MINN. STAT. § 14.26**

The Minnesota Department of Commerce (Department) sought review and approval of the above-entitled rules, pursuant to Minn. Stat. § 14.26 (2014).

On April 15, 2016, the Office of Administrative Hearings (OAH) received the documents that must be filed by the Department under Minn. Stat. § 14.26 and Minn. R. 1400.2310 (2015). Based upon a review of the filings, Minnesota Statutes, Minnesota Rules,

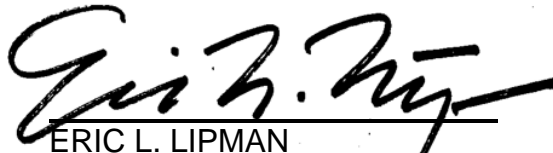
IT IS HEREBY DETERMINED:

1. The Department has the statutory authority to adopt the rules.
2. The rules were adopted in compliance with the procedural requirements of Minnesota Statutes, Chapter 14 (2014), and Minnesota Rules, Chapter 1400 (2015).
3. The record demonstrates the rules are needed and reasonable.
4. Clarity and administration of the rules would benefit from two technical corrections to the proposed rules, as set forth in the accompanying Memorandum.

IT IS HEREBY ORDERED THAT:

The rules are **APPROVED**.

Dated: April 29, 2016


ERIC L. LIPMAN
Administrative Law Judge

MEMORANDUM

The Administrative Law Judge recommends two technical corrections to the rules for the Department's review and consideration. Technical corrections are not defects in the rules. The suggested corrections are recommendations that the agency may choose to adopt, if it sees fit, to aid in the administration of the rules.

Proposed Minn. R. 2876.3050, subp. 1 (E):

The Department proposes to add a requirement obliging those who issue offerings under the MNvest program to make a written affirmation that they have undertaken a reasonable effort to identify, and exclude, those who are disqualified from making such offerings. The proposed rule reads in part:

Information provided on or with the MNvest notice form must include the following:

....

E. a written affirmation that the MNvest issuer has exercised reasonable care to confirm that it is not disqualified from making the MNvest offering under Minnesota Statutes, section 80A.461, subdivision 9¹

While "reasonable care" is a recognized term of art, it may well be that this regulatory requirement leaves many MNvest participants, or would-be participants, wondering if they have, in fact, satisfied the rule requirements. In the view of the Administrative Law Judge, clarity and administration of the rule would be improved if the issuers were given discreet tasks to complete when demonstrating due diligence. For example, one possible revision of the proposed rule might be:

Information provided on or with the MNvest notice form must include the following:

....

E. a written affirmation that the MNvest issuer has:

(1) reviewed the disqualification provisions of Minn. Stat. § 80A.461, subd. 9(a); and

(2) has undertaken the inquiries needed to establish, under Minn. Stat. § 80A.461, subd. 9(b)(4), that the issuer has no reason to know that a disqualification exists.

A revision that clarified this portion of the rule would be needed and reasonable and would not be a substantial change from the rules as proposed.

¹ Ex. C at 1-2.

Proposed Minn. R. 2876.3055, subp. 1 (A):

The Department proposes to add a requirement obliging those who issue offerings under the MNvest program to have procedures to safeguard confidential and personally identifiable information from unauthorized disclosure. The proposed rule reads in part:

A. Portal operators and MNvest issuers must take reasonable steps to ensure that purchasers' financial and personal information is properly secured. Reasonable steps include, at a minimum, the development and implementation of a written cybersecurity policy that outlines the MNvest issuer's or portal operator's policies and procedures for preventing and responding to cybersecurity attacks and data breaches resulting in the disclosure or potential disclosure of purchasers' confidential or personally identifiable information.²

The second sentence of this subparagraph is a multi-part, 50-word sentence. In the view of the Administrative Law Judge, clarity and administration of the rule would be improved if the various obligations were broken out into discreet sub-clauses. For example, one possible revision of the proposed rule might be:

A. Portal operators and MNvest issuers must take reasonable steps to ensure that purchasers' financial and personal information is properly secured. Reasonable steps include, at a minimum, a written cybersecurity policy that outlines the MNvest issuer's or portal operator's policies and procedures for:

(1) preventing cybersecurity attacks that result in the disclosure, or potential disclosure, of purchasers' confidential or personally identifiable information;

(2) preventing data breaches that result in the disclosure, or potential disclosure, of purchasers' confidential or personally identifiable information;

(3) responding to a cybersecurity attack or data breach that occurs; and,

(4) demonstrating the issuer's implementation of the written cybersecurity policy.

A revision that clarified this portion of the rule would be needed and reasonable and would not be a substantial change from the rules as proposed.

E. L. L.

² *Id.*, at 9.